

IN THE SENATE OF THE UNITED STATES.

MAY 21, 1858.—Ordered to be printed.

Mr. BIGLER submitted the following

REPORT.

*The Committee on Commerce, to whom was referred the petition of Noah Miller, ask leave to submit the following report:*

The legal representatives of Noah Miller represent: That on the 14th day of November, 1814, the said Miller, in company with West Drinkwater, Jonathan Clark, Samuel, John, and Kingsbury Duncan, as captain and crew of a large class whale boat, captured the British sloop "Mary," in the Penobscot bay, on her way from Halifax, with supplies for the British army at Castine; that Miller had hired said boat and crew for that purpose; that the proposition submitted by the supercargo of the sloop to ransom her with money was indignantly rejected by him, because he did not think it consistent with duty to his country to supply her enemies with subsistence at any rate of compensation; that he had no letters of marque, and made the capture on his own responsibility, and at the imminent hazard of himself and crew. It is also represented that said Miller, being ignorant of his rights under the law, was induced by the custom-house officers at Camden to believe that he could not hold the vessel and goods on his own account; that the only way to render the capture complete and available was to claim that he had captured the vessel as a custom-house officer, and that for that purpose he accepted a commission as an inspector of customs, antedated so as to make his authority seem to be sufficient at the time of the act; that Mr. Hook, the collector at Camden, took possession of the vessel and goods, and exposed them to sale, as provided by the revenue laws—one moiety of the proceeds going to the custom-house officers and the other to the United States treasury; that when Mr. Miller was first made aware of the fact that he had a right to capture the vessel and keep her and the goods, he was not needy, and consequently did not make application for the restoration of his money from the treasury of the United States until 1838, when, for the first time, he presented his application to Congress to reimburse to the amount of money which had gone into the treasury, through his individual agency and efforts, without any assistance from the government. The petitioners pray that the sum of \$33,212, the moiety which fell to the United States, may be paid to the heirs or legal representatives of said Miller.

The committee have given the subject a full and complete examination, and feel constrained to report adversely to the prayer of the petitioners. They do not care to go into a tedious history of all the facts of the case, or to trace its progress before Congress since 1838, when it was first presented, nor, indeed, is it at all necessary to do so in order to present clearly the points on which their conclusion rests. A few facts will answer that purpose.

In the first place, the crew, or most of them, deny that they were hired by Noah Miller. They claim, and set forth in affidavits regularly attested, that they were equally interested with Mr. Miller in the enterprise; that, by agreement, they were to share alike in the hazards and profits of the enterprise. They further allege that, but for their resistance to the proposition of the supercargo, Mr. Miller would have released the vessel and supplies for money. In maintaining their side of the case, they cast general imputation upon the character and capacity of said Miller.

It seems that one thousand dollars was paid to each of the crew, whilst Mr. Miller received over \$14,000, and Mr. Hook, the collector, a like sum—the crew claiming that the division should have been equal. Mr. Miller, on the other hand, denies that he received the \$14,000, his share, as understood between himself and the collector.

He alleges that he received but ninety dollars out of the whole sum; but the general belief seems to be, that Miller did receive the \$14,000. Such seems to have been the opinion of the district attorney and the district judge before whom the proceedings were had; besides, the account, as stated on the books of the treasury, shows that the general government received \$33,212 17, and Mr. Hook, the collector, \$14,000, and the said Miller \$14,000. The committee, therefore, incline to the opinion that Mr. Miller must be mistaken, and that he did receive the \$14,000. But the insurmountable obstacle in the way of the prayer of the petitioner is the fact that the fund for which he prays has already been drawn from the treasury. By act of the last Congress, the whole amount of \$33,212 17 was awarded to West Drinkwater, Jonathan Clark, Samuel, John, and Kingsbury Duncan, comprising the crew of the boat that captured the British sloop, in equal shares, leaving nothing for Mr. Miller. Their claim seems to have been pressed on the ground that the money justly belonged to the parties making the capture; that they were equally entitled to the spoils; and on the further ground that Mr. Miller had already received his share.

Your committee are of opinion that however proper it might be to refund to these men the money which had accrued in the treasury through their agency, and for which the government had given no equivalent, they nor no one of them can have any claim on the treasury beyond that sum; and as that has been exhausted, the claim must fall. Besides, if, as they believe, Mr. Miller did receive the \$14,000, which, at simple interest up to the date of the payment of the other parties, would amount to a sum exceeding \$51,000, Mr. Miller has been right well paid, or at a rate equal, perhaps, to the relative service performed by him as compared with the crew.

The committee ask to be discharged from the further consideration of the subject.